

JAN 14 2010

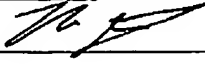
Doc Code: AP.PRE.REQ

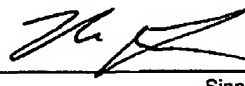
PTO/SB/33 (07-09)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
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		10/829,437	April 22, 2004
		First Named Inventor	
		Hiroshi Tojo	
		Art Unit	Examiner
		2621	J. Roberts
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. <u>59,820</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.</p> <p>Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

  
Signature  
Michael J. Guzniczak  
Typed or printed name  
(714) 540-8700  
Telephone number  
January 14, 2010  
Date

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6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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JAN 14 2010

Response Under 37 CFR § 1.116  
Expedited Procedure - Group 2621

00862.023559.

PATENT APPLICATION

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
HIROSHI TOJO ) Examiner: Jessica M. Roberts  
Application No.: 10/829,437 ) Group Art Unit: 2621  
Filed: April 22, 2004 )  
For: MOVING IMAGE PROCESSING )  
METHOD AND APPARATUS : January 14, 2010

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Pursuant to the USPTO Official Gazette "New Pre-Appeal Brief Conference Pilot Program", and in view of the Notice Of Appeal and Pre-Appeal Brief Request For Review Form PTO/SB/33 submitted herewith, Applicant respectfully requests review of the Office Action, and submits the following remarks in support thereof.

I hereby certify that this correspondence is being transmitted via facsimile to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, (571) 273-8300, on:

January 14, 2010  
(Date of Transmission)

Michael J. Guzniczak, Reg. No. 59,820  
(Name of Attorney for Applicant)

  
Signature

January 14, 2010  
Date of Signature

Applicant respectfully submits that the instant Office Action is deficient, in that it is contradictory on its face. Specifically, page 9 of the Office Action concedes that "Matsushita (modified by AAPA) as [a] whole does not explicitly disclose wherein the plurality of division information is hierarchized and the division positions are added in a case that the plurality of division information is generated in the generation step in correspondence with a plurality of item groups." Office Action, page 9.

However, page 5 of the Office Action takes a contradictory position, namely, that the AAPA does in fact disclose hierarchizing a plurality of division information in the case that the plurality of division information is generated in correspondence with a plurality of item groups:

"The Examiner respectfully disagrees [with Applicant's traversal of the assertion that hierarchizing a plurality of division information in the case that the plurality of division information is generated in correspondence with a plurality of item groups is well-known in the art]...[I]t is clear to the Examiner that AAPA teaches to add the changing point layers to create the division result which reads upon the claimed limitation." Office Action, page 5.

Applicant therefore respectfully submits the Office Action is contradictory on its face, such that there is a clear deficiency in the prima facie case in support of the rejection.

As background, the previous Office Action dated February 6, 2009 conceded that the above feature was not shown in the AAPA, but relied on Official Notice. In an Amendment dated May 6, 2009, Applicant traversed the assertion of Official Notice, and requested that the next Office Action include documentary evidence to support the contention. See page 12 of the Amendment dated May 6, 2009, which cites to MPEP §

2144.03 ("If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained.").

The instant Office Action (page 9) again concedes that the AAPA is inadequate for the reason that it lacks the above feature, and again asserts that Official Notice can be taken. But in support of documentary evidence for Official Notice, the Office Action points right back to the same inadequate AAPA. See Office Action, pages 4 and 5. Applicant therefore submits that the Office Action clearly contradicts itself.

This contradiction was pointed out in a Response To Final Office Action dated December 14, 2009:

"Applicant respectfully submits that reliance on the AAPA contradicts the concession at page 9 of the Office Action, to the effect that the AAPA does not disclose the feature." See Response To Final Office Action dated December 14, 2009 at page 10.

However, the Advisory Action makes no reference to this contradiction, and instead maintains that the final rejection was entered correctly.

Applicant submits that in view of this contradiction, it is difficult to formulate a response, for the reason that the basis for rejection is unclear. Applicant therefore respectfully requests that the present Office Action be vacated, and that a new Office Action be issued.

Applicants' undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



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Michael J. Guzniczak  
Attorney for Applicant  
Registration No.: 59,820

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